

CITY OF SAN JOSE, CALIFORNIA Redevelopment Agency of the City of San Jose 50 W. San Fernando Street, Suite 1100 San Jose, California 95110  <div style="text-align: center;"><b>STAFF REPORT</b></div>	Hearing Date/Agenda Number	
	P.C.: 7-24-02	Item: 3.a.
	File Number: RCP 02-06-007	
	Application Type: Conditional Use Permit	
	Council District: 3	
	Planning Area: Central	
	Assessors Parcel Number(s): 264-30-080	

<b>PROJECT DESCRIPTION</b>		Completed by: Judie Gilli
Location: 418 and 420 South Market Street		
Gross Acreage: 0.13	Net Acreage: N/A	Net Density: N/A
Existing Zoning: CG	Existing Use: Vacant commercial building	
Proposed Zoning: No change	Proposed Use: Public eating, drinking and entertainment establishment, including poolroom use and live music; after-midnight operation, until 2:00 am, daily (Back Bar)	

<b>GENERAL PLAN</b>		Completed by: JG
Land Use/Transportation Diagram Designation		Project Conformance:
Core Area		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<input checked="" type="checkbox"/> See Analysis and Recommendations

<b>SURROUNDING LAND USES AND ZONING</b>		Completed by: JG
North: Commercial building (presently vacant)	Commercial General (CG)	
East: Bar and Nightclub	Commercial General (CG)	
South: Auto repair facility	Commercial General (CG)	
West: Parking Lot	Commercial General (CG)	

<b>ENVIRONMENTAL STATUS</b>		Completed by: JG
<input checked="" type="checkbox"/> Reuse of Downtown Supplemental EIR, Certified 04/27/99	<input type="checkbox"/> Exempt	
<input type="checkbox"/> Environmental Impact Report complete on:	<input type="checkbox"/> Environmental Review Incomplete	
<input type="checkbox"/> Negative Declaration circulated on :	<input type="checkbox"/> Negative Declaration adopted on:	

<b>FILE HISTORY</b>		Completed by: JG
Annexation Title: Original City		Date: N/A

<b>HISTORIC STATUS: Landmark</b>		Completed by: JG
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<b>REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION</b>		
<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Action	Approved by: _____ Date: _____
<input checked="" type="checkbox"/> Conditional Approval	<input type="checkbox"/> Recommendation	
<input type="checkbox"/> Denial		Approved by: _____ Date: _____
<input type="checkbox"/> Uphold Director's Decision		

<b>PROPERTY OWNER/APPLICANT</b>		
Jacek Rosicki Middlefield Road Palo Alto, CA 94301		

## BACKGROUND

The applicant/property owner requests this Conditional Use Permit (CUP) to allow the operation of a drinking and entertainment establishment (dba, Back Bar), with poolroom use and live music; the CUP request also includes after-midnight operation of the facility, until 2:00 am, seven days a week, and architectural improvements to the existing structure. The project site is located at 418 and 420 South Market Street and is in the Commercial General (CG) Zoning District. A CUP is required in the CG Zoning District for drinking and entertainment establishments (i.e., bars and nightclubs), poolrooms and the operation of any non-office, commercial facility after midnight; eating establishments (i.e., restaurants) are permitted within the CG district and do not require conditional approval. The site is located at the western edge of the Market Gateway Redevelopment Project Area in the portion of downtown typically referred to as the South of First Area (SoFA).

The 0.13-acre project site is developed with a one-story commercial building and abutting shed, which are situated on the north side of the rectangularly-shaped parcel. Through this CUP, these existing, unoccupied structures will be architecturally upgraded and their interiors reconfigured to accommodate the proposed nightclub, restaurant and poolroom (five pool tables are proposed; any facility with three or more pool tables is deemed a “poolroom”) uses. An outdoor dining area will be added to the southern portion of the site. The proposed hours of operation of the facility are 6:00 am to 2:00 am, daily, with live musical entertainment occurring between 10:00 am and 2:00 am. The project site is situated amid a variety of commercial uses and abuts another nightclub (dba, Zoe’s, formerly the Cactus Club) to the east. The proposed Back Bar and Zoe’s establishments will be under common ownership and operation.

## ENVIRONMENTAL REVIEW

Environmental Clearance has been granted for this project through the Final Supplemental Environmental Impact Report (SEIR) entitled, *San Jose Downtown Strategy Plan*, adopted by City Council Resolution No. 68839 on April 27, 1999.

## GENERAL PLAN CONFORMANCE

The project site is designated “Core Area” on the *San Jose 2020 Land Use/Transportation Diagram*. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, this designation specifies that late night, entertainment-oriented uses, such as bars and nightclubs, be encouraged to locate in the Core Area rather than in other less appropriate areas of the City. Given this, and the project’s compatibility with adjacent uses in the South of First Area, the proposal is consistent with the objectives of the General Plan and the Core Area designation.

## ANALYSIS

The applicant proposes to operate a restaurant, with outdoor dining, and through this CUP, a drinking and entertainment establishment (Back Bar), between the hours of 6:00 am and 2:00 am, daily; live musical entertainment will be limited to 10:00 am to 2:00 am through the subject CUP. Such uses and

hours of operation are subject to the City Council's *24-hour Use Policy, Guidelines for Evaluation of Nightclubs and Bars*, and the City's Zoning Ordinance (Municipal Code, Section 20.40.500). The objective of these policies and regulations is to ensure that late-night uses, particularly bars and nightclubs, are compatible with surrounding land uses. A major consideration of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address this project's operational compatibility within its surroundings:

After Midnight use in the Downtown Core. The proposed Back Bar restaurant and nightclub will be limited in operation to no later than 2:00 am. This provision is consistent with the City Council *24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars*, where after-midnight uses are encouraged to locate within the Downtown. Back Bar's location, amid commercial uses and other restaurants and nightclubs, enhances its compatibility with surrounding land uses and its hours of operation will contribute to the creation of a vibrant, "24-hour downtown."

Land Use Compatibility. Back Bar is surrounded by commercial uses in all directions: A vacant building is located to the north; an auto repair shop to the south; a bar/nightclub to the east and a surface parking lot to the west. The proposed outdoor patio is located on the south side of the project site, abutting the auto repair shop. The nearest residential use to the project is approximately 500 feet northeast of the site, on the second floor of 387 S. First Street.

The project site is located in the South of First Street Area (SoFA), where there are many restaurants and nightclubs in the immediate area. The Cactus Club (Zoe's), The Agenda, Polly Esther's, First Street Billiards and The Usual are located within 500 feet of the Back Bar and all operate, similarly, until 2:00 am. According to the Police Department, there have not been recent complaints about noise in the area. Moreover, the Police Department has determined that the existing commercial uses in this area have been operating properly and have not caused disturbances (i.e., calls regarding criminal activity, arrests) in the area, including during after-midnight hours. With the attached conditions, the proposed project, located in the Downtown Core, adjacent other similar uses with similar hours of operation will be compatible.

Parking. The project site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on these Code provisions of Section 20.90.510, parking is not required for public eating or drinking establishments and nightclubs. The site, which is fully developed with the existing building and patio, does not include any off-street parking. However, nearby parking facilities (i.e., public garage, on-street parking) will be able to serve patrons and employees of the facility.

Historic Landmark Commission Review/Architectural Compatibility. The structure located at 418 S. Market Street was the subject of an architectural and historical evaluation in August 2000. At that time, the building was found to retain a "fair level of historic integrity with its original design and construction." While the building rated a 33.48, making it eligible for Structure of Merit designation, it does not qualify as eligible for City Landmark status or the State or National Registers. The plans for new construction are such that they will have little impact on the original historic fabric still extant on the building's exterior.

Moreover, historic preservation staff of the City's Department of Planning, Building and Code Enforcement reviewed and approved the project, finding that the work proposed meets the Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings.

## RECOMMENDATION

Staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is an application for a Conditional Use Permit (CUP) to operate a drinking and entertainment establishment, with poolroom use, and after-midnight operations until 2:00 am, daily.
2. The project site is located in the Commercial General (CG) Zoning District
3. A CUP is required for the operation of drinking and entertainment establishments in the CG Zoning District.
4. Restaurants are a permitted use in the CG Zoning District.
5. Municipal Code, Section 20.40.500 requires that any commercial establishment, other than office uses, in any Commercial District, obtain a CUP in order to operate between the hours of 12:00 am and 6:00 am.
6. The approximately 0.13-acre site is developed with a one-story building and shed.
7. The project site is designated "Core Area" on the *San Jose 2020 General Plan Land Use/Transportation Diagram*.
8. The environmental impacts of this project were addressed by a Final Supplemental EIR entitled, *Downtown Strategy Plan*, adopted by City Council Resolution, No. 68839, on April 27, 1999.
9. The project site is adjacent to a variety of commercial uses within the downtown's South of First Area.
10. The project site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating, drinking and entertainment establishments.
11. The project site is adequately served by public and private utility services.
12. The project site is served by the existing roadway network, which consists of South Market Street, a four-lane major collector street, and Highway 87, a major freeway.

13. There are no residential uses within 500 feet of the project.

This Planning Commission finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) Zoning District in that the operation of drinking, entertainment and poolroom establishments, and commercial uses operating between the hours of 12:00 am and 6:00 am, requires the approval of a Conditional Use Permit.
2. The project conforms to the *San Jose 2020 General Plan* in that it proposes the operation of a drinking, entertainment and eating establishment within the Downtown Core Area.
3. This project is consistent with the City Council Policies on 24-Hour Use and Bars and Nightclubs in that it proposes the operation of drinking, entertainment and poolroom establishments, with after-midnight use, in an area of downtown predominately developed with commercial and office land uses.
4. The project conforms to the California Environmental Quality Act in that it does not create impacts not previously addressed in the *Downtown Strategy Plan* Final Supplemental EIR.
5. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

Finally, based upon the above-stated findings and subject to the conditions set forth, the Planning Commission finds that:

1. The proposed use at the location will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed restaurant and entertainment uses are consistent with the commercial uses of the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed restaurant and drinking establishment will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
  - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, *Downtown Strategy Plan EIR* (Resolution No. 68839); and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:

- a) By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
- b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

### **CONCURRENT CONDITIONS**

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.

3. Development Plans. The subject property shall be developed, maintained and operated in conformance with the Development Plan, “Back Bar”, dated 7-15-02, prepared by Banduchi Associates Architects.
4. Hours of Operation. The hours of operation for the restaurant and bar, with outdoor patio area, will be limited to 6:00 am to 2:00 am, daily, with live musical entertainment limited to the hours of 10:00 am to 2:00 am, daily.
5. Security. A minimum of two security officers shall be on duty for every 100 patrons using the drinking establishment portion of the facility during its hours of operation.
6. Noise and Acoustics.
  - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
  - b. Noise emission shall comply with the policies identified in the “Noise Element” of the *San Jose 2020 General Plan*.
7. Trash, Refuse, Garbage and Litter.
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project’s frontages.
  - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 pm and 6:00 am, seven days a week.
  - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
  - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way.
8. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
9. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
10. Public Works.
  - a. Remove and replace broken curb, gutter and sidewalk along the project’s Market Street frontage. Close one, unused driveway on South Market Street.
  - b. This site is located along the State Highway 82 which requires a CALTRANS encroachment permit for any street improvement work.

## CONDITIONS SUBSEQUENT

1. Building Permit. Regarding construction or physical alteration of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
2. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
3. Time Limit. This Conditional Use Permit expires and has no further force or effect five (5) years from the date of its approval. A Compliance Hearing at the discretion of the Planning Commission may be required at any time during the term of this Permit.
4. Renewal. The Permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than 90 days, but less than 180 days, prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
5. Revocation, Suspension, Modification. This Special Use Permit may be revoked, suspended or modified by the Executive Director of the Redevelopment Agency, or the Planning Commission on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350 of the *San Jose Municipal Code* it finds:
  - a. A violation of any condition of the Special Use Permit was not abated, corrected or rectified within the time specified on a notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on a Notice of Noncompliance; or
  - c. A use as presently conducted creates a nuisance.